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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KRISTYNA SOUDERS, individually)	Case No.
and on behalf of all others similarly)	
situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	COMPLAINT FOR VIOLATIONS
	)	OF:
vs.)	
	)	1. NEGLIGENT VIOLATIONS
ADVANCE AMERICA, CASH	)	OF THE TELEPHONE
ADVANCE CENTERS OF	)	CONSUMER PROTECTION
CALIFORNIA, LLC, and DOES 1	)	ACT [47 U.S.C. §227 ET
through 10, inclusive, and each of them,	)	SEQ.]
	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
Defendant.	)	ACT [47 U.S.C. §227 ET
	)	SEQ.]
	)	3. FAIR DEBT COLLECTION
	)	Fair Debt Collection
	)	Practices Act, 15 U.S.C. §
	)	1692, <i>et seq.</i>]
	)	4. VIOLATIONS OF THE
	)	ROSENTHAL FAIR DEBT
	)	COLLECTION PRACTICES
	)	ACT [CAL. CIV. CODE
	)	§1788 ET SEQ.]
)	
	)	<u>DEMAND FOR JURY TRIAL</u>

1
2 Plaintiff KRISTYNA SOUDERS (“Plaintiff”), individually and on behalf of
3 all others similarly situated, alleges the following against Defendant ADVANCE
4 AMERICA, CASH ADVANCE CENTERS OF CALIFORNIA, LLC upon
5 information and belief based upon personal knowledge:

6 **INTRODUCTION**

7 1. Plaintiff’s Class Action Complaint is brought pursuant to the
8 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”).

9 2. Plaintiff, individually, and on behalf of all others similarly situated,
10 brings this Complaint for damages, injunctive relief, and any other available legal
11 or equitable remedies, resulting from the illegal actions of Defendant in
12 negligently, knowingly, and/or willfully contacting Plaintiff no Plaintiff’s cellular
13 telephone, thereby the TCPA, 47 U.S.C. § 227. Plaintiff alleges as follows upon
14 personal knowledge as to herself and her own acts and experiences, and, as to all
15 other matters, upon information and belief, including investigation conducted by
16 his attorneys.

17 3. In addition to Plaintiff’s Class Claims, Plaintiff also brings an action
18 for damages as an individual consumer for Defendant’s violations of the federal
19 Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter
20 “FDCPA”) and the Rosenthal Fair Debt Collection Practices Act, Cal Civ. Code
21 §1788, et seq. (hereinafter “RFDCPA”) which prohibit debt collectors from
22 engaging in abusive, deceptive, and unfair practices.

23 **JURISDICTION AND VENUE**

24
25 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
26 a resident of California, seeks relief on behalf of a Class, which will result in at
27 least one class member belonging to a different state than that of Defendant, a New
28

1 York company that does business in the state of California. Plaintiff also seeks up
2 to \$1,500.00 in damages for each call in violation of the TCPA, which, when
3 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
4 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
5 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
6 present, and this Court has jurisdiction.

7 5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 over
8 Plaintiff’s claims arising under the FDCPA, 15 U.S.C. § 1692, *et seq.* Ancillary to
9 this claim, this Court has jurisdiction pursuant to 28 U.S.C. § 1367(a) over
10 Plaintiff’s claims arising under the RFDCPA, Cal. Civ. Code § 1788, *et seq.*

11 6. Venue is proper in the United States District Court for the Central
12 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
13 business within the State of California and Plaintiff resides within this District.

14 **PARTIES**

15 7. Plaintiff, KRISTYNA SOUDERS (“PLAINTIFF”), is a natural
16 person residing in Los Angeles County in the state of California, and is a “person”
17 as defined by 47 U.S.C. § 153(39). Furthermore, Plaintiff is a “consumer” as
18 defined by the FDCPA, 15 U.S.C. §1692a(3) and a “debtor” as defined by the
19 RFDCPA, Cal. Civ. Code § 1788.2(h).

20 8. At all relevant times herein, DEFENDANT, ADVANCE AMERICA,
21 CASH ADVANCE CENTERS OF CALIFORNIA, LLC (“DEFENDANT”), is
22 debt collection company, and is a “person” as defined by 47 U.S.C. § 153(39).
23 Furthermore, Defendant, at all relevant times herein, was a company engaged, by
24 use of the mails and telephone, in the business of collecting a debt from
25 PLAINTIFF which qualifies as a “debt,” as defined by 15 U.S.C. §1692a(5).
26 DEFENDANT regularly attempts to collect debts alleged to be due another, and
27
28

1 therefore is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6) and
2 the RFDCPA, Cal. Civ. Code § 1788.2(c).

3 9. The above named Defendant, and its subsidiaries and agents, are
4 collectively referred to as “Defendants.” The true names and capacities of the
5 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
6 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
7 names. Each of the Defendants designated herein as a DOE is legally responsible
8 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend
9 the Complaint to reflect the true names and capacities of the DOE Defendants
10 when such identities become known.

11 10. Plaintiff is informed and believes that at all relevant times, each and
12 every Defendant was acting as an agent and/or employee of each of the other
13 Defendants and was acting within the course and scope of said agency and/or
14 employment with the full knowledge and consent of each of the other Defendants.
15 Plaintiff is informed and believes that each of the acts and/or omissions
16 complained of herein was made known to, and ratified by, each of the other
17 Defendants.
18

19 **FACTUAL ALLEGATIONS – TCPA**

20
21 11. Beginning in or around March of 2018, Defendant contacted Plaintiff
22 on her cellular telephone number ending in -4086, in an effort to collect an alleged
23 debt owed from Plaintiff.

24 12. Defendant called Plaintiff from telephone numbers confirmed to
25 belong to Defendant, including without limitation (661) 533-0471.

26 13. In its efforts to collect the alleged debt owed from Plaintiff, Defendant
27 used an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1)
28 to place its daily calls to Plaintiff seeking to collect an alleged debt owed.

1 14. Defendant's calls constituted calls that were not for emergency
2 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

3 15. Defendant's calls were placed to telephone number assigned to a
4 cellular telephone service for which Plaintiff incurs a charge for incoming calls
5 pursuant to 47 U.S.C. § 227(b)(1).

6 16. During all relevant times, Defendant did not possess Plaintiff's "prior
7 express consent" to receive calls using an automatic telephone dialing system or an
8 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
9 227(b)(1)(A). Furthermore, Plaintiff orally revoked any and all consent to be
10 contacted using an automated telephone dialing system, to the extent any ever
11 existed.

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13
14 **FACTUAL ALLEGATIONS – FDCPA**

15 17. In addition to the facts pled above, at various times prior to the filing
16 of the instant complaint, including within one year preceding the filing of this
17 complaint, DEFENDANT contacted PLAINTIFF in an attempt to collect an
18 alleged outstanding debt.

19 18. On or about March of 2018, Plaintiff began receiving numerous calls
20 from Defendant.

21 19. Each of these calls were made to Plaintiff in connection with
22 collection on an alleged debt.

23 20. On several occasions, Plaintiff told Defendant to stop calling her, but
24 Defendant continued to call.

25 21. Furthermore, Plaintiff did not owe the alleged debt question.

26 22. DEFENDANT'S conduct violated the FDCPA and RFDCPA in
27 multiple ways, including but not limited to:
28

- a) Causing a telephone to ring repeatedly or continuously to annoy Plaintiff (Cal. Civ. Code § 1788.11(d));
- b) Communicating, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute an harassment to Plaintiff under the circumstances (Cal. Civ. Code § 1788.11(e));
- c) Causing Plaintiffs telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff (15 U.S.C. § 1692d(5));
- d) Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff (15 U.S.C. § 1692c(a)(1)); and
- e) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff (15 U.S.C. § 1692d)).

23. As a result of the above violations of the FDCPA and RFDCPA, Plaintiff suffered and continues to suffer injury to PLAINTIFF'S feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and DEFENDANT is liable to PLAINTIFF for PLAINTIFF'S actual damages, statutory damages, and costs and attorney's fees.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to

1 receiving such calls within the four years prior to the
2 filing of this Complaint

3 25. Plaintiff represents, and is a member of, The Class, consisting of All
4 persons within the United States who received any collection telephone calls from
5 Defendant to said person's cellular telephone made through the use of any
6 automatic telephone dialing system or an artificial or prerecorded voice and such
7 person had not previously not provided their cellular telephone number to
8 Defendant within the four years prior to the filing of this Complaint.

9 26. Defendant, its employees and agents are excluded from The Class.
10 Plaintiff does not know the number of members in The Class, but believes the Class
11 members number in the thousands, if not more. Thus, this matter should be
12 certified as a Class Action to assist in the expeditious litigation of the matter.

13 27. The Class is so numerous that the individual joinder of all of its
14 members is impractical. While the exact number and identities of The Class
15 members are unknown to Plaintiff at this time and can only be ascertained through
16 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
17 The Class includes thousands of members. Plaintiff alleges that The Class
18 members may be ascertained by the records maintained by Defendant.

19 28. Plaintiff and members of The Class were harmed by the acts of
20 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
21 and Class members via their cellular telephones thereby causing Plaintiff and Class
22 members to incur certain charges or reduced telephone time for which Plaintiff and
23 Class members had previously paid by having to retrieve or administer messages
24 left by Defendant during those illegal calls, and invading the privacy of said
25 Plaintiff and Class members.

26 29. Common questions of fact and law exist as to all members of The
27 Class which predominate over any questions affecting only individual members of
28 The Class. These common legal and factual questions, which do not vary between

1 Class members, and which may be determined without reference to the individual
2 circumstances of any Class members, include, but are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this
4 Complaint, Defendant made any collection call (other than a
5 call made for emergency purposes or made with the prior
6 express consent of the called party) to a Class member using
7 any automatic telephone dialing system or any artificial or
8 prerecorded voice to any telephone number assigned to a
9 cellular telephone service;
- 10 b. Whether Plaintiff and the Class members were damages
11 thereby, and the extent of damages for such violation; and
- 12 c. Whether Defendant should be enjoined from engaging in such
13 conduct in the future.

14 30. As a person that received numerous collection calls from Defendant
15 using an automatic telephone dialing system or an artificial or prerecorded voice,
16 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
17 typical of The Class.

18 31. Plaintiff will fairly and adequately protect the interests of the members
19 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
20 class actions.

21 32. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all Class members is impracticable. Even if every Class member could afford
24 individual litigation, the court system could not. It would be unduly burdensome
25 to the courts in which individual litigation of numerous issues would proceed.
26 Individualized litigation would also present the potential for varying, inconsistent,
27 or contradictory judgments and would magnify the delay and expense to all parties
28 and to the court system resulting from multiple trials of the same complex factual

1 issues. By contrast, the conduct of this action as a class action presents fewer
2 management difficulties, conserves the resources of the parties and of the court
3 system, and protects the rights of each Class member.

4 33. The prosecution of separate actions by individual Class members
5 would create a risk of adjudications with respect to them that would, as a practical
6 matter, be dispositive of the interests of the other Class members not parties to such
7 adjudications or that would substantially impair or impede the ability of such non-
8 party Class members to protect their interests.

9 34. Defendant has acted or refused to act in respects generally applicable
10 to The Class, thereby making appropriate final and injunctive relief with regard to
11 the members of The Class as a whole.

12 13 **FIRST CAUSE OF ACTION**

14 **Negligent Violations of the Telephone Consumer Protection Act**

15 **47 U.S.C. §227 et seq.**

16 **By Plaintiff and The Class Against Defendant**

17 35. Plaintiff repeats and incorporates by reference into this cause of
18 action the allegations set forth above at Paragraphs 1-33.

19 36. The foregoing acts and omissions of Defendant constitute numerous
20 and multiple negligent violations of the TCPA, including but not limited to each
21 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

22 37. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
23 seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
24 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

25 38. Plaintiff and the Class members are also entitled to and seek
26 injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

By Plaintiff and The Class Against Defendant

39. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-33.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

41. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

42. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Violations of the Federal Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

By Plaintiff, Individually, Against Defendant

43. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-22.

44. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

FOURTH CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

By Plaintiff, Individually, Against Defendant

45. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-22.

46. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for

1 each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47
2 U.S.C. §227(b)(3)(C).

- 3 • Any and all other relief that the Court deems just and proper.

4 **THIRD CAUSE OF ACTION**

5 **Violations of the Federal Fair Debt Collection Practices Act**

6 **15 U.S.C. § 1692 et seq.**

7
8 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
9 Defendant for the following:

- 10
11 A. Actual damages;
12 B. Statutory damages for willful and negligent violations;
13 C. Costs and reasonable attorney's fees,
14 D. For such other and further relief as may be just and proper.

15
16 **FOURTH CAUSE OF ACTION**

17 **Violations of the Rosenthal Fair Debt Collection Practices Act**

18 **Cal. Civ. Code § 1788 et seq.**

19
20 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
21 Defendant for the following:

- 22
23 A. Actual damages;
24 B. Statutory damages for willful and negligent violations;
25 C. Costs and reasonable attorney's fees,
26 D. For such other and further relief as may be just and proper.

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28 ///

